

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Norfolk Division

RAY WASHINGTON, JR., #54122-083,

Petitioner,

v.

ACTION NO.
2:06cv134

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of petitioner's constitutional rights pertaining to his convictions in the Circuit Court for the City of Newport News for four counts of malicious wounding and four counts of use or display of firearm during the commission of a felony, for which he was sentenced to a term of seventy-eight years imprisonment with all but thirty years suspended.

The petition was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. As noted in the Magistrate Judge's Report and Recommendation, which was filed on September 12, 2006, petitioner's Motion to Amend His Brief in Opposition to Respondent's Motion to Dismiss was construed by the Court as a response to the Motion to Dismiss and was, effectively, GRANTED. Additionally, the Report of the Magistrate Judge recommended dismissal of the petition. By copy of the report, each party was

advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On September 20, 2006, the Court received petitioner's objections to the portion of the United States Magistrate Judge's Report and Recommendation recommending dismissal based on the merits.

The Court, having reviewed the record and examined the objections filed by the petitioner to the United States Magistrate Judge's Report, and having made de novo findings with respect to the portions objected to, does hereby accept the findings and recommendations set forth in the report of the United States Magistrate Judge filed September 12, 2006. It is therefore ORDERED that the petition be DENIED and DISMISSED and that judgment be entered in favor of the respondent.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to the petitioner and to counsel of record for the respondent.

/s/ Jerome B. Friedman

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
October 16, 2006